

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Parlin Post Office
Parlin, Colorado

Docket No. A2012-102

ORDER GRANTING MOTION FOR LATE ACCEPTANCE OF COMMENTS
AND MODIFYING THE PROCEDURAL SCHEDULE

(Issued March 1, 2012)

On January 5, 2012, the Commission issued a notice accepting the appeal of the Parlin post office closure and establishing a procedural schedule for the consideration of the appeal.¹ In Order No. 1103, the Commission set out several deadlines, including a deadline of February 15, 2012 for the Postal Service to file an answering brief in support of its position. *Id.* at 5.

On February 22, 2012, the Postal Service filed a motion petitioning the Commission to accept the late submission of its comments regarding the appeal.² The Postal Service stated that its comments were being filed late due to the time required by

¹ Notice and Order Accepting Appeal and Establishing Procedural Schedule, January 5, 2012 (Order No. 1103).

² Motion of the United States Postal Service for Late Acceptance of Comments Regarding Appeal, February 22, 2012 (Motion).

new counsel to review the extensive Administrative Record, confer with field personnel, and prepare the Postal Service's comments regarding the appeal. On the same day, the Postal Service filed its comments regarding the appeal.³

On February 28, 2012, the Board of County Commissioners of the County of Gunnison, Colorado filed an objection to the Motion.⁴ The Objection stated that the Motion should be denied for the following reasons: the Notice called for an "answering brief" not a responsive set of "comments" from the Postal Service; the Motion was not filed prior to the deadline imposed in the Notice and therefore was not timely; the Postal Service did not have good cause to request an extension of time; and the Motion set forth no statutory authority. Objection at 1-2.

On February 29, 2012, the Postal Service filed an answer to the Objection.⁵ In its Answer, the Postal Service stated that its Motion was filed four business days after the February 15, 2012 deadline; the delay was due to review of the record by counsel new to Commission practice, requiring more time than originally anticipated; and that the County was not prejudiced by the late filing. Answer at 1-3.

The Postal Service's Motion is granted. The Commission finds the arguments set forth in the Objection unpersuasive. First, although the Notice refers to an "answering brief" to be filed by the Postal Service, its pleading, styled "comments", replies to Petitioners' arguments and is functionally indistinguishable from one styled "answering brief". Thus, the form of the pleading alone is not a reason to reject it.

Second, the Commission finds that the justification for late filing set forth in the Answer constitutes good cause. Third, although the Objection cites 39 CFR 3001.16 for the proposition that a request for an extension of time must be "timely filed", the regulation does not define "timely" to exclude submissions after the due date. The

³ United States Postal Service Comments Regarding Appeal, February 22, 2012.

⁴ Objection to the "Motion of the United States Postal Service for Late Acceptance of Comments Regarding Appeal", February 28, 2012 (Objection).

⁵ Answer of the United States Postal Service in Opposition to Board of County Commissioners of the County of Gunnison, Colorado's Objection to the Motion of the United States Postal Service for Late Acceptance of Comments regarding Appeal, February 29, 2012 (Answer).

Motion was filed at the same time as the comments and, as the Postal Service notes, only four business days late. Given that the Commission's decision in this appeal is not due until April 11, 2012, this brief passage of time does not prejudice any party, particularly since the procedural schedule is being modified to extend the date for replies to the Postal Service comments. Similarly, the Postal Service's failure to include statutory authority in the Motion does not prejudice any party, and is not fatal to the Motion.

To ensure that the Petitioners and other parties have adequate time to respond to the Postal Service's comments, the Commission will extend the deadline for any reply briefs to March 15, 2012 and the deadline for motions by any party requesting oral argument to March 22, 2012.

It is ordered:

1. Motion of the United States Postal Service for Late Acceptance of Comments Regarding Appeal, filed February 22, 2012, is granted.
2. The procedural schedule is modified as set forth in the body of this Order.

By the Commission.

Shoshana M. Grove
Secretary